

JUN 21 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

BENITO PABLO-ORTIZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74098

Agency No. A79-812-551

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 12, 2006^{**}

Before: WALLACE, KLEINFELD, and BERZON, Circuit Judges.

Benito Pablo-Ortiz, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming an immigration judge's decision preterminating his application for asylum, and denying his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

application for withholding of removal and relief under the Convention Against Torture (“CAT”). To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. Reviewing for substantial evidence, *Kasnecovic v. Gonzales*, 400 F.3d 812, 813 (9th Cir. 2005), we dismiss in part and deny in part the petition for review.

We lack jurisdiction to review the BIA’s denial of Pablo-Ortiz’s asylum application as untimely. *See* 8 U.S.C. § 1158(a)(3); *Ramadan v. Gonzales*, 427 F.3d 1218, 1222 (9th Cir. 2005) (holding that this court lacks jurisdiction to review the agency determination that asylum application was not filed within one year after the last entry into the United States and no “changed circumstances” excused late filing).

Substantial evidence supports the BIA’s determination that Pablo-Ortiz failed to establish eligibility for withholding of removal because he conceded that he was never personally targeted or threatened in any way by the people he believes harmed his uncle and may have caused the disappearance of his father. Thus, Pablo-Ortiz failed to show a “clear probability” that if he were to return to Guatemala he would be persecuted by guerillas, or any other individuals the government is unable or unwilling to control. *Lim v. INS*, 224 F.3d 929, 938 (9th Cir. 2000).

Pablo-Ortiz also failed to establish eligibility for CAT relief because he failed to show that it is more likely than not that he would be tortured if he were to return to Guatemala. *See Kamalthas v. INS*, 251 F.3d 1279, 1284 (9th Cir. 2001).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.